

1 CHIEF JUDGE CHACKIN: You're excused, thank you.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 CHIEF JUDGE CHACKIN: All right, we'll go off the
5 record and be back at 2 p.m.

6 (Whereupon, at 11:40 a.m., the hearing was
7 recessed, to reconvene at 2:00 p.m. this same day, Thursday,
8 January 14, 1999.)

9

10

CHIEF JUDGE CHACKIN: Next witness?

MR. SHAINIS: Yes.

Whereupon,

having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

Q Ms. Marshall, could you state your full name for the record?

A Deborah Kay Marshall.

Q And, what is your address?

A 1301 East Avenue I, Lancaster, California.

Q Could you state your current employment?

A Southland Communications, sales rep.

Q All right, and how long have you been with Southland Communications?

A On and off, 14 years.

Q Could you list for me, provide a list to the best of your ability, of all the positions you've had with

1 Southland?

2 A Yes, I was in accounting. I did data entry after
3 we had had a severe earthquake. I was service writer,
4 service manager, and now I'm in sales.

5 Q You mentioned the earthquake.

6 A Yes.

7 Q Could you provide the date of the earthquake?

8 A January 17, 1994, 4:41 a.m.

9 (Laughter.)

10 Q Okay. Did Southland have any damage as a result
11 of the earthquake?

12 A Lots.

13 Q Could you describe the extent of the damage, or
14 the nature of the damage?

15 A Everything. Cubicles were smashed and caved in on
16 top of one another, on top of computer systems or
17 telephones. Our stock room had shelves, racks that we had
18 built in there, where the radios were all kept. They were
19 all caved in on top of one another. We couldn't even enter
20 that room.

21 The sales floor, where we kept all the radios in
22 showcases, the showcases were all smashed and broken and
23 radios were pretty much on the ground, with everything on
24 top of them. When we went back into the Tech Rooms, we
25 found the same thing. The tech benches were all knocked

1 over, the equipment all knocked over. Things were broken.
2 I mean, it was disaster. We even looked at cracks in the
3 walls, cracks in the floor.

4 Q You mentioned damage to the computer?

5 A Yes.

6 Q Subsequent to the earthquake, were you able to use
7 the computer?

8 MR. SCHAUBLE: Objection to the computer.
9 Reference to a specific computer?

10 BY MR. SHAINIS:

11 Q The computer system that was in place at Southland

12 --

13 A Yes?

14 Q -- were you able to use it?

15 A No.

16 CHIEF JUDGE CHACKIN: Why couldn't you use it?

17 THE WITNESS: The main server took a crash, took a
18 bad hit. We couldn't do anything with the computer. The
19 main server was down.

20 BY MR. SHAINIS:

21 Q Was a new computer system acquired?

22 A Yes, it was.

23 Q And, the earthquake took place in January. When
24 was the new computer system acquired?

25 A I believe it was acquired the end of February and

1 we got it up and running by April.

2 Q When you say up and running, what do you mean?

3 A Well, we had bought it, but we didn't have the
4 computer guy to come over right away, so it sat, literally,
5 on a desk, unopened.

6 Q And, did you have any duties with respect to the
7 new computer system?

8 A Yes, I did. I had to do all the data entry.

9 Q How did you do the data entry?

10 A From the customer files.

11 Q When you say files, you're talking about paper
12 files?

13 A Yes, paper files.

14 Q And, how long did that take you, to input the
15 data?

16 A About three months.

17 Q Was the data that you had available to you
18 complete?

19 A Some was, some wasn't.

20 Q Do you have any knowledge concerning the amount of
21 radios that were in the inventory of Southland or Lucky's?

22 CHIEF JUDGE CHACKIN: At what time?

23 BY MR. SHAINIS:

24 Q Prior to the earthquake?

25 MR. SCHAUBLE: Immediately prior to the

1 earthquake?

2 BY MR. SHAINIS:

3 Q Immediately prior to the earthquake?

4 A I'd seen them, yeah. I can guesstimate how many
5 there were.

6 Q Well, don't guess. Can you estimate?

7 A Estimate?

8 Q Estimate, do not guess.

9 A About 1,500.

10 Q And, would you estimate after the earthquake how
11 many --

12 A About 500 --

13 MR. SCHAUBLE: At what point after the earthquake?

14 BY MR. SHAINIS:

15 Q Sixty days after the earthquake?

16 A About 500.

17 Q Would this be an amount that would currently be
18 kept on hand today?

19 A Yes.

20 Q Do you know Kevin Hessman?

21 A Yes.

22 Q How do you know Mr. Hessman?

23 A I worked with him.

24 Q He started working at Southland or Lucky's after
25 you were working there, is that correct?

1 A Yes.

2 Q And, did you ever know Mr. Hessman to tell a lie?

3 MR. SCHAUBLE: Objection, Your Honor.

4 CHIEF JUDGE CHACKIN: Sustained.

5 BY MR. SHAINIS:

6 Q Can you tell me your opinion as to his reputation
7 for voracity in the workplace?

8 MR. SCHAUBLE: Objection.

9 CHIEF JUDGE CHACKIN: Sustained. If you can come
10 up with specific incidents, go ahead.

11 MR. SHAINIS: Your Honor, if I've asked this
12 question, I apologize.

13 BY MR. SHAINIS:

14 Q Did Mr. Hessman ever lie to you?

15 MR. SCHAUBLE: Objection, Your Honor. Again, we
16 reiterate the objection here that it is the Bureau's
17 position that if Mr. Kay wished to impeach Mr. Hessman or
18 any other witness, that they should have asked these
19 questions of Mr. Hessman or the corresponding witness on
20 cross-examination, under Rule 608(b) of the Federal Rules of
21 Evidence, and give him an opportunity to state or explain
22 his position.

23 As the record stands now, if the witness is
24 allowed to answer this question, we have a position where we
25 have a testimony here and the Bureau is faced with having to

1 recall a witness back from California or have the record lie
2 as it is, with no opportunity to let the witness explain.

3 Particularly in a case such as this, where the
4 first time we talked to Ms. Marshall was just this morning,
5 I don't think it's either appropriate or equitable to allow
6 impeachment testimony to come in at this stage of the
7 proceeding.

8 CHIEF JUDGE CHACKIN: Well, I have to hear the
9 testimony. If a question is put to her, where I feel it's
10 proper, I'll permit it. If you feel afterwards that there's
11 a basis for your contending that Federal Rules apply, then
12 you can make it. But, I don't know what it's all about,
13 yet. If it's an objection to the question did he ever lie
14 to you, I'll sustain that objection. If he wants to go into
15 his dealings with Mr. Hessman and how she had to deal with
16 him and what happened in certain circumstances, we'll see
17 where we go from there. I'm not going to permit a question
18 like that, whether he ever lied to her. If he wants to
19 develop the facts, I'll see where it goes.

20 BY MR. SHAINIS:

21 Q All right, Ms. Marshall, could you explain your
22 dealings on a day to day basis with Mr. Hessman?

23 A Yes, any time we'd have a customer come in and
24 order parts, I'd have to go in there and get the parts
25 through Kevin. He took care of all inventory and stock.

1 Q And, was your relationship with Mr. Hessman
2 cordial?

3 MR. SCHAUBLE: Objection, relevance.

4 CHIEF JUDGE CHACKIN: Overruled.

5 THE WITNESS: Yes.

6 BY MR. SHAINIS:

7 Q Could you rely on the information that Mr. Hessman
8 provided you?

9 A No.

10 MR. SCHAUBLE: Objection.

11 CHIEF JUDGE CHACKIN: Overruled.

12 THE WITNESS: No.

13 BY MR. SHAINIS:

14 Q Thank you. Can you give me an instance where
15 information was provided that you could not rely upon?

16 A I'd ask him for parts. He'd ignore my request.
17 Without being able to get, in fact, whether we had it in
18 stock or not, it was a complication between me and the
19 customers.

20 Q Did you ever bring any complaints about Mr.
21 Hessman to any of your superiors?

22 MR. SCHAUBLE: Objection.

23 CHIEF JUDGE CHACKIN: Overruled.

24 THE WITNESS: Yes, I did.

25 BY MR. SHAINIS:

1 Q Who did you bring these complaints to?

2 A Roy Jensen.

3 Q And, what was the nature of the complaints?

4 A That he wouldn't listen, wouldn't do anything when
5 we requested things from him. He wasn't doing his job.

6 Q Did you ever complain to Mr. Jensen or anyone else
7 that Mr. Hessman was not, had lied to you or was not honest
8 with you?

9 A Yes.

10 Q When was that complaint made, approximately?

11 A The first time I complained about it was
12 approximately three months after he had started in the
13 stockroom.

14 Q Do you remember the complaint?

15 A That he was ignoring requests and then when he was
16 being asked about the request, he denied things.

17 Q Did you complain to anyone else besides Mr.
18 Jensen?

19 A Yes.

20 Q Who was that?

21 A James Kay.

22 Q And, the same complaint to Mr. Kay that you made
23 to Mr. Jensen?

24 A Yes.

25 Q And, you mentioned Mr. Roy Jensen. Who was Mr.

1 Jensen?

2 A At that time, he was service manager.

3 Q He was your superior?

4 A Yes.

5 Q What was your relationship with Mr. Jensen?

6 MR. SCHAUBLE: Objection.

7 CHIEF JUDGE CHACKIN: To what?

8 MR. SCHAUBLE: I'm not sure. The question is
9 vague. In what sense does he mean relationship?

10 MR. SHAINIS: I'll withdraw the question.

11 CHIEF JUDGE CHACKIN: All right.

12 BY MR. SHAINIS:

13 Q Did you have a cordial relationship with Mr.
14 Jensen?

15 A Yes.

16 Q And, did you ever complain to anyone about Mr.
17 Jensen?

18 A No.

19 Q Were you satisfied with the way Mr. Jensen handled
20 your complaints --

21 A No.

22 Q -- concerning Mr. Hessman?

23 A Mr. Hessman? No.

24 Q And, why were you not satisfied?

25 MR. SCHAUBLE: Objection, irrelevant.

1 CHIEF JUDGE CHACKIN: Overruled. I'll permit
2 this. I agree with you that so far, nothing has been
3 developed that affects my estimate of impeachment. But,
4 this is counsel's case. I'll let him proceed.

5 MR. SHAINIS: Thank you.

6 MR. SCHAUBLE: Very well, Your Honor. I'll just
7 note a continuing objection to this.

8 CHIEF JUDGE CHACKIN: Well, let's find out where
9 they're going here. I'm not going to interject each time.

10 THE WITNESS: Can you ask that again?

11 BY MR. SHAINIS:

12 Q Yes. I had asked you if you were, just to
13 paraphrase, I had asked you if you felt Mr. Jensen
14 satisfactorily handled your complaints concerning Mr.
15 Hessman and you answered, I believe, no?

16 A No.

17 Q And, then, the next question was, could you
18 explain why you were not satisfied?

19 A Because I didn't feel Roy was doing anything as
20 far as the problem with Hessman. That's why I went to James
21 Kay.

22 Q Could you tell me, based on your experience in the
23 workplace as to, in your opinion, whether Mr. Hessman and
24 Mr. Jensen had a reputation for telling the truth?

25 MR. SCHAUBLE: Objection.

1 CHIEF JUDGE CHACKIN: Sustained.

2
3 BY MR. SHAINIS:

4 Q Are you aware of any security work that was done
5 by Mr. Jensen while he was working for Lucky's or Southland?

6 A Yes.

7 Q And, how did you become aware of that?

8 A Overhear him talking about it.

9 Q Did he have his own company, do you know?

10 A Not that I was aware.

11 Q Did I ask you this about Mr. Hessman?

12 A You said that about Mr. Jensen.

13 Q I'm sorry, did Mr. Hessman, was he involved in any
14 security work while he was --

15 A I know he was working for a security company on
16 the side, yes.

17 Q Did either of them have use of radios while they
18 were doing the security work?

19 A Yes.

20 Q And, you know that from personal knowledge?

21 A Yes. I filled out the rental form.

22 Q I see. This is for each of them?

23 A Only Hessman. Only for Hessman. I don't know
24 about Jensen.

25 Q I see, thank you. How often do you have dealings

1 with Mr. Kay during the course of a work day? Do you see
2 him on a daily basis?

3 A Yes, I do.

4 Q And, would your answer be the same if I asked you
5 that question prior to the earthquake?

6 A Yes, it would.

7 Q Prior to the earthquake, what was the nature of
8 your dealings with Mr. Kay?

9 A Basically, I would let him know if we had problems
10 with a customer. One that was having problems with the
11 frequency, couldn't get in. Then I would go to Jim
12 regarding that problem.

13 Q And --

14 A Otherwise, it would be just things with the work
15 shop, any problems going on.

16 Q And, would you tell us how Mr. Kay would react to
17 your bringing these matters to his attention? Now, this is
18 prior to the earthquake.

19 A He'd take care of them right away.

20 Q And, was there any change subsequent to the
21 earthquake in Mr. Kay's handling of things?

22 A Yes.

23 Q Can you tell us what the nature of the change was?

24 A He was impatient with me, would yell at me because
25 I was coming to even walk in his office. Just seemed

1 preoccupied.

2 Q And, how long did this go on after the earthquake?

3 A Still is.

4 MR. SHAINIS: Just one moment, Your Honor.

5 BY MR. SHAINIS:

6 Q The data entry that you testified to, that you
7 did, was that after the purchase of the DOS system you were
8 entering?

9 A Yes.

10 MR. SHAINIS: No further questions.

11 CHIEF JUDGE CHACKIN: Cross?

12 MR. SCHAUBLE: Your Honor, I think initially I'd
13 like to move to strike the witness's testimony concerning
14 Mr. Hessman and Mr. Jensen, with the exception of the
15 testimony concerning any security work that may have been
16 done, on the grounds that no showing that this relates to
17 bias, impeachment or any of the other issues in this case.

18 CHIEF JUDGE CHACKIN: Overruled.

19 MR. SCHAUBLE: Okay.

20 CROSS-EXAMINATION

21 BY MR. SCHAUBLE:

22 Q Good afternoon, Ms. Marshall.

23 A Good afternoon.

24 Q Now, do I understand correctly that from the time
25 until the earthquake until the new computer system was

1 installed, Lucky's, I mean, Southland did not have an
2 operating computer system?

3 A Correct.

4 Q That was a period of approximately three months?

5 A Correct.

6 Q Now, is it correct that Southland and Lucky's Two-
7 Way Radio shared the same computer system?

8 A Yes, they did.

9 Q So, it would be correct that both Southland and
10 Lucky's did not have a computer system during this three
11 month period?

12 A Correct.

13 Q Now, is it correct that one of the functions of
14 the billing system, of the computer system, was billing,
15 correct?

16 A Correct.

17 Q And, during the time the computer system was out
18 of service, was Southland able to bill its customers?

19 A I don't know. Not by computer.

20 Q Do you know whether any billing took place at
21 Southland?

22 A I don't know.

23 Q Do you know whether during this period, whether
24 Lucky's was able to --

25 A I don't know.

1 Q -- affect its billing?

2 A I don't know.

3 Q Now, you testified concerning data entry that you
4 performed. Was that data relating to Southland
5 Communications?

6 A Yes.

7 Q Did you also do data entry with respect to Lucky's
8 Two-Way Radio?

9 A Yes.

10 Q Where did you obtain the data to re-enter into the
11 computer?

12 A Customer files that we were able to get back
13 organized.

14 Q These were paper files?

15 A Correct.

16 Q Now, I believe you testified, and correct me if
17 I'm wrong, that you had personal knowledge that Mr. Hessman
18 was conducting, was operating a security company on the
19 side, correct?

20 A Correct.

21 Q What was the basis of that personal knowledge?

22 A A, I rented radios to him for the security
23 company. He openly admitted it to me before. He told me
24 himself.

25 Q Do you recall how many radios he rented?

1 A The first time, he rented only four.

2 Q Were there multiple occasions?

3 A Yes.

4 Q Do you recall how many he rented on subsequent
5 occasions?

6 A I can think of three times I helped him after that
7 myself.

8 Q Do you recall how many radios he rented on
9 subsequent occasions?

10 A The second time, he rented again four. The third
11 time he rented six, and the fourth time he rented six.

12 Q Do you recall in what time period he rented these
13 radios?

14 A They were always over the weekend. He'd rent them
15 on Friday and return them on Monday when he came back to
16 work.

17 Q Now, Mr. Hessman's position at Southland was a
18 full-time position, Monday through Friday, correct?

19 A Correct.

20 Q Do you have any knowledge as to where he was
21 conducting the security work?

22 A Metro Security.

23 CHIEF JUDGE CHACKIN: What do you mean, Metro
24 Security?

25 THE WITNESS: That is a company name.

1 CHIEF JUDGE CHACKIN: Oh, that is a company?

2 Okay.

3

4 BY MR. SCHAUBLE:

5 Q Was Mr. Hessman the owner or an employee of this
6 company?

7 A As far as I know, just employee.

8 Q Okay. Do you know where Metro Security is
9 located?

10 A No. Just had a company name.

11 Q Do you know what sort of work Mr. Hessman did for
12 Metro Security?

13 A He said security.

14 Q Do you know what sort of functions he --

15 A No, I didn't discuss it. Just said he was doing
16 security.

17 Q Do you recall if this was toward the beginning or
18 the end of --

19 A Towards the end.

20 Q -- Mr. Hessman's employment --

21 A Towards the end.

22 Q In 1993, to your knowledge, would that be the
23 right time?

24 A As far as I can remember, yes.

25 Q Now, Ms. Marshall, your testimony was, after the

1 earthquake -- your estimate was, there were about 500 radios
2 in the inventory?

3 A Right.

4 Q Would that include new radios, used radios and the
5 rental fleet?

6 A That's used and basically rentals, not used -- or,
7 not new.

8 Q Do you know if there were any radios that were
9 segregated or specifically set out to be as rental radios?

10 A Yes.

11 Q Do you recall approximately how many of those
12 radios there were?

13 A That we have?

14 Q That you had at the time?

15 A At that time? About 500.

16 Q So, all the used radios were set out to be used as
17 rental radios?

18 A Yes.

19 Q Do you have any estimate as to, again, the same
20 time frame, after the earthquake, as to approximately how
21 many radios would be out at any given time?

22 A At any given time? We'd have at least half of
23 them gone.

24 Q I'm sorry, I didn't hear the last part?

25 A At any given time, at least half the rental radios

1 would be gone.

2 Q And, being used by customers?

3 A Being in use, correct.

4 Q Now, you testified concerning rental tickets.

5 A Invoices.

6 Q Rental invoices. Is it correct that when Mr.
7 Hessman would charge out these radios, you would write up a
8 rental invoice for the use of those radios?

9 A Yes.

10 Q And, as a matter of fact, it's correct that
11 whenever anybody, the customer, rented radios, a rental
12 invoice would be written up?

13 A Correct.

14 Q And, you would be one of the people who would
15 write such invoices, correct?

16 A Correct.

17 MR. SCHAUBLE: Your Honor, if I may approach the
18 witness?

19 CHIEF JUDGE CHACKIN: Yes.

20 MR. SCHAUBLE: I'm showing her what's been
21 received as Kay Exhibit 52.

22 BY MR. SCHAUBLE:

23 Q If I could just ask you to generally review it,
24 take a moment to review the exhibit. My question to you is,
25 do you recognize these documents as a form of rental

1 invoices that was used by Southland Communications?

2 A Yes, I do.

3 Q Once you wrote a rental invoice for a customer,
4 what would you do?

5 A It would go into a file that they have for rentals
6 and it would also be entered into a computer.

7 Q What sort of computer entry would be made with
8 respect to rentals?

9 A Make, model of radio, customer name, date.

10 Q Now, would this be considered a Southland record
11 or a Lucky's record?

12 A Southland.

13 Q To your knowledge, would that computer record
14 still exist today?

15 A As far as I know, yes.

16 CHIEF JUDGE CHACKIN: What years are we talking
17 about?

18 MR. SCHAUBLE: I believe we're talking about '93,
19 Your Honor.

20 THE WITNESS: Before the earthquake, yes.

21 CHIEF JUDGE CHACKIN: No, no, the records are
22 today for the invoices issued before --

23 THE WITNESS: The invoices --

24 CHIEF JUDGE CHACKIN: Pardon me?

25 THE WITNESS: The invoices still exist, but

1 they're no longer inputted in the computer.

2 BY MR. SCHAUBLE:

3 Q So, the invoices would still exist, however, any
4 computer records would no longer exist?

5 A Correct.

6 MR. SCHAUBLE: One moment, Your Honor.

7 CHIEF JUDGE CHACKIN: Yes.

8 (Pause.)

9 MR. SCHAUBLE: Thank you, Ms. Marshall. No
10 further questions.

11 CHIEF JUDGE CHACKIN: Any redirect?

12 MR. SHAINIS: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SHAINIS:

15 Q Ms. Marshall, just to start off with just a
16 clarification, just to make the record clear, the whole of
17 radios that we discussed, these 500 radios, so to speak,
18 what did they consist of?

19 A Used --

20 Q They were all used?

21 A -- demos, rentals. We do have new used -- new
22 radios, but they were usually not considered into that,
23 because they always vary.

24 Q Okay, you just said demos and rentals?

25 A Demos, rentals and used.

1 Q Would loaners be included in that?

2 A Yes.

3 Q And, in response to a question of Mr. Schauble,
4 you indicated that the number of rentals was 500. You're
5 just co-mingling everything. A rental could be anything.

6 A All of it together.

7 Q I just wanted to make sure of that, thank you.
8 The rentals, did they receive service on Lucky's computers?

9 MR. SCHAUBLE: Objection, beyond the scope of the
10 cross.

11 CHIEF JUDGE CHACKIN: Overruled.

12 THE WITNESS: Yes.

13 BY MR. SHAINIS:

14 Q And, if someone was renting a radio, was an entry
15 made in Lucky's billing system?

16 A I don't know.

17 Q And, the price paid for renting a radio, did that
18 include the repeater service, do you know?

19 A Yes.

20 MR. SHAINIS: No further questions.

21 CHIEF JUDGE CHACKIN: Do you have any further
22 questions?

23 MR. SCHAUBLE: No, Your Honor.

24 CHIEF JUDGE CHACKIN: You're excused. Thank you
25 very much.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 CHIEF JUDGE CHACKIN: Let's go off the record.

4 (Whereupon, a short recess was taken.)

5 CHIEF JUDGE CHACKIN: We'll go back on the record.

6 Yes, Mr. Schauble?

7 MR. SCHAUBLE: Your Honor, in light of Ms.

8 Marshall's testimony, an inquiry. We have an exhibit in

9 this case as Exhibit 2, several rental agreements.

10 CHIEF JUDGE CHACKIN: Yes.

11 MR. SCHAUBLE: My question is, are these all the
12 rental agreements that are currently in Mr. Kay's custody?

13 MR. SHAINIS: I don't know.

14 MR. GAULT: Your Honor, I would make the request
15 that Mr. Kay search his files --

16 MR. KELLER: Well, perhaps we could ask Mr. Kay.
17 He will know.

18 MR. SHAINIS: Well, let me ask this. Let's assume
19 for argument's sake that we do have more rental agreements.

20 MR. SCHAUBLE: Your Honor, I'm interested in
21 specific rental agreements, specifically any in the name of
22 Metro Security or Kevin Hessman.

23 CHIEF JUDGE CHACKIN: There are none in there now?

24 MR. SCHAUBLE: Not that I've been able to find,
25 Your Honor. If there are --

1 CHIEF JUDGE CHACKIN: Well, I think that's a
2 reasonable agreement in light of witness testimony. If
3 there are such agreements, they should be made available.

4 MR. KELLER: We'll try.

5 CHIEF JUDGE CHACKIN: We're just dealing with the
6 ones, Hessman or Metro.

7 MR. SHAINIS: All right, we'll make an inquiry.

8 CHIEF JUDGE CHACKIN: Is that it?

9 MR. SCHAUBLE: That's it, Your Honor. We're ready
10 for the next witness.

11 CHIEF JUDGE CHACKIN: All right. Would you raise
12 your right hand, please?

13 Whereupon,

14 ANTHONY MARSHALL
15 having been first duly sworn, was called as a witness
16 herein, and was examined and testified as follows:

17 CHIEF JUDGE CHACKIN: Please be seated.

18 DIRECT EXAMINATION

19 BY MR. SHAINIS:

20 Q Mr. Marshall, could you state your full name for
21 the record?

22 A Anthony William Marshall.

23 Q And, could you state your residence address?

24 A 1301 East Avenue I, Space 101, Lancaster,
25 California 93535.

1 Q Just so the record is complete, Mr. Marshall, are
2 you related to Deborah Marshall?

3 A Yes, I am. I'm her husband.

4 Q Just one moment. And, Mr. Marshall, are you
5 currently employed?

6 A Yes.

7 Q Where are you employed?

8 A Southland Communications.

9 Q How long have you been employed there?

10 A Fourteen years solid, four years before that, on
11 and off.

12 Q What is your job at Southland?

13 A At present, I hold the two positions. I hold
14 installer and I hold stockroom, shipping, receiving.

15 Q Have you always had the same position? Have you
16 always been an installer?

17 A Yes.

18 Q What are your duties as installer?

19 A Install the communications equipment on the
20 commercial repeater sites, installing communications
21 equipment into customers' vehicles and base stations. And,
22 general maintenance and installation of the equipment in the
23 shop.

24 Q And, in your working with the equipment, can you
25 tell me, prior to January, 1994, can you tell me if there

1 was an inventory of radios at Southland at that time?

2 A I can tell you the inventory, but not a quantity.

3 Q Okay, there was an inventory?

4 A Yes.

5 Q Can you estimate the quantity of radios?

6 A No.

7 Q Was there an inventory of used radios?

8 A Yes.

9 Q And, there was an inventory of new radios?

10 A Yes.

11 Q Were the new radios used for sales purposes?

12 A New?

13 Q Yes.

14 A Yes, sir.

15 Q What was the purpose of the used radios?

16 A Sales, loaners, demos, contributions. I'm trying
17 to think if there's anything outside of that. I don't think
18 so.

19 Q Did any of the used radios get used for rentals?

20 MR. SCHAUBLE: Objection, leading.

21 CHIEF JUDGE CHACKIN: Overruled.

22 BY MR. SHAINIS:

23 Q And, I realize you cannot estimate how many
24 radios, but would there, at that period of time, now this is
25 January of 1994, was it more than a few radios?

1 MR. SCHAUBLE: Objection. The question has been
2 asked and he said he can't estimate.

3 CHIEF JUDGE CHACKIN: Well --

4 MR. SHAINIS: Well --

5 CHIEF JUDGE CHACKIN: -- I'll sustain the
6 objection to that question, but I'll permit further
7 questioning along that line.

8 MR. SHAINIS: All right, thank you.

9 BY MR. SHAINIS:

10 Q Where were the inventoried radios kept at
11 Southland?

12 A In the stockroom.

13 Q And, were they kept on shelving?

14 A On what is called gorilla racks.

15 Q Gorilla?

16 A Gorilla racks.

17 Q Such as the animal?

18 A That's what they're named after.

19 Q Okay, I'm just doing that for the reporter. Can
20 you tell me what the size of the room that this inventory
21 was contained in?

22 A Can you give me a minute to think on that?

23 Q Absolutely.

24 A I've got to do some judging here.

25 Q Absolutely.

1 A The room is probably -- I'm a bad judge of
2 distance. I would have to say the room is not under 25 by
3 20.

4 Q Okay.

5 A The racks went 15 feet to the ceiling and the
6 whole room is filled with racks, with very little walk space
7 in between. That's why it's difficult to judge it.

8 Q Very little what space?

9 A Walking space between the racks.

10 Q Oh, okay. And, were the racks filled with this
11 inventory?

12 A Yes.

13 Q I understand what you described. That seems like
14 a lot of radios.

15 MR. SCHAUBLE: Objection.

16 CHIEF JUDGE CHACKIN: I'll sustain the objection.

17 (Pause.)

18 BY MR. SHAINIS:

19 Q Mr. Marshall, on January 17, 1994, at
20 approximately 4:30 in the morning, where were you?

21 A In bed, asleep.

22 Q What time did you get up?

23 A I can't name the exact time, but --

24 Q Do you recall approximately --

25 A Yeah, falling one story down to the floor.

1 Q Were you with your wife?

2 A Yes.

3 Q And, what caused your falling one story to the
4 floor?

5 A Our bedroom floor caving in from the earthquake.

6 Q And, what did you do subsequent to that?

7 A Built a little stack out of stuff that down in the
8 room that we had, since we were in storage garages which
9 were locked from the exterior, to get out to the living
10 room. Crawled up in the living room, got my wife up there,
11 and got us out of the place, and proceeded to go from there
12 to the shop, being that our place was in ruins and I could
13 do nothing there at all.

14 Q When you say the shop, what do you mean?

15 A Southland Communications.

16 Q And, what did you find when you entered Southland
17 or when you arrived at Southland?

18 A Jim was there already, and the place was
19 demolished.

20 Q And, describe to me, as specifically as you can,
21 what do you mean by demolished?

22 A Nothing is where it would have normally have been.
23 The dropped ceiling tiles, the light fixtures on the dropped
24 ceiling, anything at the ceiling levels was on the ground.
25 All the office cubicles were basically busted apart and all

1 over the place. The desks were -- anything that was on top
2 of a desk was on the ground. Computers, typewriters,
3 everything was a complete shambles and a mess. It looked
4 like a tornado had literally gone through the inside of the
5 building.

6 Q Was there electricity in the building?

7 A I don't recall if we had electricity immediately
8 or not. It was day lighting up by the time I got there
9 then.

10 Q Was there water service to the building?

11 A I, again, do not recall. I left the building
12 shortly after that.

13 Q Why did you leave?

14 A Jim gave me the keys to one of our large company
15 vehicles and told me to go to my house and get whatever
16 goods out of my place I could and still salvage out of
17 there, before they red tagged my building and would not
18 allow us back into it.

19 Q I want to go back before the earthquake and did
20 you see and speak to Mr. Kay on a daily basis?

21 A Daily basis? No.

22 Q How many times a week did you encounter Mr. Kay
23 before the earthquake, 90 days before the earthquake?

24 A I would see him on a daily. I would not interact
25 with him on a daily. Interacting, maybe two days, three

1 days out of the week.

2 Q And, what was the nature of your interaction with
3 him?

4 A Is this at the business now or --

5 Q Yes, at the business. Prior to the earthquake?

6 A Yes, but I mean, at the business or any time when
7 I was --

8 Q No, at the business?

9 A At the business? Verification of certain things
10 with the company vehicles. If I needed a repair done on the
11 company vehicles, I had to go to Mr. Kay to see what
12 mechanic he wanted me to send it to and specific
13 verification of different things involving specialty items
14 dealing with questions of Lucky's orientation, dealing with
15 the Southland business that would involve my installations.

16 Q Did Mr. Kay's interaction with you change after
17 the earthquake?

18 A It was almost impossible to deal with him after
19 the earthquake.

20 Q Could you be more specific with examples?

21 A He was very short and quick to temper on the exact
22 same items that before he would have very patiently
23 explained it to you in detail. Where, after the earthquake,
24 it was like, I don't have time to deal with this, I've got
25 other things on my mind. You know your job, do it and get

1 it done.

2 Q Did you know Kevin Hessman?

3 A Yes, I did.

4 Q How did you know him?

5 A He was the stock person and I had to deal with him
6 to get equipment out of the stockroom for my installations.

7 Q What was your relationship with him?

8 MR. SCHAUBLE: Objection.

9 CHIEF JUDGE CHACKIN: Overruled.

10 THE WITNESS: Personal feelings, do you mean, or
11 relationship as a business?

12 BY MR. SHAINIS:

13 Q Let's start with personal feelings?

14 A Personal feelings --

15 MR. SCHAUBLE: Objection, irrelevant.

16 CHIEF JUDGE CHACKIN: Sustained. I'll let you
17 delve into the business relationship.

18 BY MR. SHAINIS:

19 Q All right, what was your business relationship
20 with Kevin Hessman?

21 A Business relations, I would approach his office
22 and ask him for equipment, and he would -- no, I can't say
23 he would bring me the equipment, because half the time, he
24 wouldn't do it. I would have to go to the general manager
25 to actually get him to do his job.

1 Q Did you ever make any complaints to any of your
2 superiors about Mr. Hessman?

3 MR. SCHAUBLE: Objection.

4 CHIEF JUDGE CHACKIN: Overruled.

5 THE WITNESS: I made complaints to the general
6 manager at that time, who was Roy Jensen, and when that
7 seemed to get ignored, I went directly to Mr. Kay.

8 BY MR. SHAINIS:

9 Q Did you ever complain to either Mr. Jensen or Mr.
10 Kay concerning Mr. Hessman's voracity?

11 MR. SCHAUBLE: Objection.

12 CHIEF JUDGE CHACKIN: Overruled.

13 THE WITNESS: Can you please explain the word
14 "voracity"?

15 BY MR. SHAINIS:

16 Q Yes, his truthfulness or lack thereof?

17 A I had made comments that I suspected that
18 equipment was going into his car for usages, personal
19 usages, without going through the company.

20 Q Did Mr. Hessman have any duties outside of the
21 company? Did he have a job outside of Southland, that you
22 know of?

23 A That I know of for sure? No. I do believe I had
24 overheard him and Roy Jensen talking at times about a
25 security something, bodyguards or something, that they were

1 doing off company time.

2 Q You just mentioned Mr. Jensen. You knew Mr.
3 Jensen as one of your superiors, is that correct?

4 A Correct.

5 Q Did there ever come a time when you made a
6 complaint about Mr. Jensen?

7 A Yes.

8 Q Would that be to Mr. Kay?

9 A Yes.

10 MR. SCHAUBLE: Objection, Your Honor. What kind
11 of complaint to Mr. Kay?

12 CHIEF JUDGE CHACKIN: Overruled.

13 BY MR. SHAINIS:

14 Q What was the nature of the complaint?

15 A That I did not believe Mr. Jensen was properly
16 doing his job and reprimanding Mr. Hessman for not doing
17 his, and that he was coddling him.

18 Q Did you ever complain to Mr. Kay about Mr. Jensen
19 being truthful?

20 A I never put it in that manner.

21 Q How would you have put it?

22 MR. SCHAUBLE: Objection.

23 CHIEF JUDGE CHACKIN: Sustained.

24 MR. SHAINIS: Your Honor, can we have like a two-
25 minute break, please?

1 CHIEF JUDGE CHACKIN: All right.

2 (Whereupon, a short recess was taken.)

3 CHIEF JUDGE CHACKIN: Back on the record.

4 MR. SHAINIS: No further questions.

5 CHIEF JUDGE CHACKIN: Any cross?

6 MR. SCHAUBLE: Just a little bit, Your Honor.

7 CHIEF JUDGE CHACKIN: Go ahead.

8 CROSS-EXAMINATION

9 BY MR. SCHAUBLE:

10 Q Good afternoon, Mr. Marshall.

11 A Good afternoon.

12 Q You testified concerning your work for Southland.

13 Is it correct that you also performed other work for Mr.

14 Kay?

15 A Yes.

16 Q Could you please describe that other work?

17 A I do general maintenance and repair on his
18 personal dwelling and on his personal vehicles.

19 Q During what time period?

20 A Ever since I've worked for him. Well, no, if I
21 can correct that?

22 Q Sure.

23 A Ever since I've worked for him, I have always --
24 can't say always have -- he bought the house 14, between 14
25 and 16 years ago and that's when I started doing personal

1 work at his house for him. Before that, he was an apartment
2 dweller, and I did not do personal maintenance for him.

3 Q Would this be work you would perform on evenings
4 and weekends for Mr. Kay?

5 A Yes.

6 Q Now, you testified concerning the inventory of
7 radios. Is it correct that within the subset known as "used
8 inventory", there was a part of that, some of those radios
9 were considered to be in the rental fleet?

10 A Can you rephrase that, please?

11 Q Certainly. In the inventory, was there a stack of
12 radios known as the rental fleet?

13 A Yes.

14 Q These were radios that were specifically
15 designated to be used as rental radios?

16 A Correct.

17 Q This was part of the inventory of used radios?

18 A I'm not sure if it's actually counted in inventory
19 as used, or if it's counted in as a rental. I'm not sure
20 how that is counted in.

21 Q Currently, do you have any estimate of the size of
22 the rental fleet?

23 A No more than 200.

24 Q Could you estimate the size of the rental fleet
25 immediately after the earthquake?

1 A Immediately after? There was no accounting for
2 anything. It was a pile.

3 Q Say by June of 1994?

4 A No, it would have been very difficult for me to
5 count at that time, because I was still not actually
6 involved in the stockroom and stock.

7 Q When did you become involved in the stockroom and
8 stock?

9 A As a professional basis, as a job living?

10 Q Yes.

11 A About two months ago.

12 MR. SCHAUBLE: One moment, Your Honor?

13 CHIEF JUDGE CHACKIN: Yes.

14 (Pause.)

15 MR. SCHAUBLE: No further questions, Your Honor.

16 Thank you, Mr. Marshall.

17 CHIEF JUDGE CHACKIN: Any redirect?

18 MR. SHAINIS: No, Your Honor.

19 CHIEF JUDGE CHACKIN: You're excused, thank you.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 CHIEF JUDGE CHACKIN: All right, the only
23 remaining witness, I gather, is Mr. Kay, is that correct?

24 MR. SHAINIS: That's correct, Your Honor.

25 CHIEF JUDGE CHACKIN: Will he be here tomorrow

1 morning?

2 MR. SHAINIS: Yes, Your Honor.

3 CHIEF JUDGE CHACKIN: Nine a.m. tomorrow morning?

4 MR. SHAINIS: Your Honor, there's no problem with
5 Mr. Kay being here at nine, as far as I know. I had a brief
6 discussion with Mr. Schauble, in light of the weather, that
7 I think we should plan for nine, but if Mr. Kellett is en
8 route, we should delay until he gets here.

9 CHIEF JUDGE CHACKIN: Well, the weather is
10 supposed to improve tomorrow. It's supposed to be warmer,
11 as I understand.

12 MR. SCHAUBLE: I think that should be fine, Your
13 Honor. I heard from Mr. Knowles-Kellett that the Gettysburg
14 facility is closing early today because of the weather, but
15 I'm hoping that it's going to be improved overnight, so
16 there shouldn't be a problem with him being down here by 9
17 a.m. tomorrow morning.

18 CHIEF JUDGE CHACKIN: All right, so there's a
19 possibility we may finish this case tomorrow?

20 MR. SHAINIS: Hope springs eternal. I don't know.
21 We have to do Kay's cross-examination and then following his
22 direct --

23 CHIEF JUDGE CHACKIN: Well, if we don't, we don't.
24 We'll finish on Tuesday. All right, we're in recess until
25 tomorrow at 9 a.m.

1 (Whereupon, at 3:00 p.m., the hearing was
2 recessed, to reconvene at 9:00 a.m. on Friday, January 15,
3 1999.)

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HEARING DATE: January 14, 1999
LOCATION: Washington, D.C.

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